

The opinion in support of the decision being entered today was
not written for publication and is not binding precedent of the
Board.

Paper No. 20

MAILED

UNITED STATES PATENT AND TRADEMARK OFFICE

MAR 24 2004

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LEON SALTSOV and GENNALDIY GAPONYUK

Appeal No. 2004-0261
Application 09/503,122

12.76.01-106

ON BRIEF

Before GARRIS, BARRETT and OWENS, *Administrative Patent Judges*.
OWENS, *Administrative Patent Judge*.

REMAND TO THE EXAMINER

In the examiner's answer (page 2) the examiner states that claim 6 is rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. 6,301,344 to Meyer et al., and the examiner correctly states that this rejection is set forth in the final rejection (paper no. 6, pages 2-3). In the appeal brief, however, the statement of the issues on appeal (pages 5-6) does not include the rejection under 35 U.S.C. § 102(e), and the brief contains no

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mention of this rejection. The record does not indicate that the examiner has notified the appellants of this defect in the brief.

Pursuant to 37 CFR § 1.192(d) (1997), we remand the application for the examiner to give the appellants one month to file an amended brief wherein the appellants address the rejection under 35 U.S.C. § 102(e).

Also, the final rejection (page 2) includes a rejection under 35 U.S.C. § 112, second paragraph. This rejection is not included in the examiner's answer, and the record does not indicate that the rejection has been withdrawn. In addition, in the final rejection (page 11), claims 16-20 are rejected under 35 U.S.C. § 103 over U.S. 6,241,069 to Mazur et al. in view of Meyer et al. and U.S. 5,964,336 to Itako et al. In the examiner's answer (page 3), however, this rejection includes only claims 16-18, and there is no explanation on the record regarding whether that rejection has been withdrawn as to claims 19 and 20.

We further remand the application for the examiner to file a supplemental answer limited to 1) responding to any arguments by the appellants in their amended brief regarding the § 102(e) rejection, 2) clarifying whether the rejection under 35 U.S.C. § 112, second paragraph, has been withdrawn, and 3) clarifying whether the examiner has withdrawn the rejection of claims 19

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and 20 under 35 U.S.C. § 103 over Mazur et al. in view of Meyer et al. and Itako et al.

This application, by virtue of its "special" status, requires an immediate action. See Section 708.01(d) of the *Manual of Patent Examining Procedure*, 8th Edition, Rev. 1, February 2003. The Board should be promptly informed of any action affecting the status of this appeal (e.g., abandonment, allowance, reopening of prosecution).

REMANDED

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